

**IN THE COURT OF APPEALS**  
**FIRST APPELLATE DISTRICT OF OHIO**  
**HAMILTON COUNTY, OHIO**

SENSIBLE LEAD RENOVATION, INC.,	:	APPEAL NOS. C-100498 TRIAL NO. A-0403916
	:	
Plaintiff,	:	<i>JUDGMENT ENTRY.</i>
	:	
vs.	:	
	:	
LARRY MORRIS,	:	
	:	
JACKIE MORRIS,	:	
	:	
Defendants-Appellees,	:	
	:	
and	:	
	:	
THE HOME OWNERSHIP CENTER OF GREATER CINCINNATI, INC.,	:	
	:	
Defendant-Appellant.		

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Defendant-appellant, The Home Ownership Center of Greater Cincinnati, Inc. (HOC), appeals the judgment entered by the Hamilton County Court of Common Pleas in favor of appellees Larry Morris and Jackie Morris for HOC's alleged violation of R.C. 1345.01 et seq., the Consumer Sales Practices Act ("CSPA").

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 11.1.1.

The dispute arose from a loan that HOC had provided for the Morrisses to rehabilitate their home. The note provided that the Morrisses would begin making monthly payments on the note beginning September 1, 2003.

The Morrisses entered into a contract with Sensible Lead Renovation, Inc., to do the work. But after a dispute had arisen about the quality of the workmanship, Sensible Lead sued the Morrisses for breach of contract. The Morrisses filed a counterclaim against Sensible Lead, which in turn added HOC as a third-party defendant. Ultimately, the Morrisses and Sensible Lead entered into a settlement, leaving the Morrisses' causes of action against HOC for negligence and violation of the CSPA as the only remaining claims in the case.

The essence of the Morrisses' CSPA claim was that HOC had continued its efforts to collect under the note after it had agreed to extend time for payment pending the resolution of the dispute between the Morrisses and Sensible Lead. The jury returned a verdict in favor of HOC on the Morrisses' negligence claim and a \$5000 verdict in favor of the Morrisses on the CSPA claim.

We address HOC's three assignments of error out of order. In its second assignment of error, HOC contends that the trial court erred in admitting the testimony of Jackie Morris concerning the alleged extension of time to begin payments on the promissory note. Specifically, Mrs. Morris stated that HOC employee Bill Herper had informed her that payments would not be due until the rehabilitation work had been completed to the Morrisses' satisfaction.

In general, extrinsic evidence is inadmissible to contradict the plain meaning of an unambiguous contract.<sup>2</sup> In this case, the alleged statement made by Herper contradicted the plain language of the promissory note, which stated unambiguously that payments were to begin September 1, 2003. Thus, the extrinsic evidence was erroneously admitted.

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<sup>2</sup> See *Alexander v. Buckeye Pipe Line Co.* (1978), 53 Ohio St.2d 241, 246, 374 N.E.2d 146.

Moreover, even if Herper's statement had been admissible, the evidence was uncontroverted that Herper was not authorized to contractually bind the company. Thus, any statement on Herper's part concerning an extension of time was irrelevant.

And while the Morrisises contend that HOC's director of operations had authorized an extension of time, that contention is not supported by the record. Although there was evidence that HOC had not initially complained about the Morrisises' failure to pay, there was no evidence that the director had offered an extension of time. Accordingly, we sustain the second assignment of error.

In its third assignment of error, HOC claims that the verdict was against the manifest weight of the evidence. Judgments supported by some competent, credible evidence going to all the essential elements of the case must not be reversed as being against the manifest weight of the evidence.<sup>3</sup>

R.C. 1345.02(A) provides that "[n]o supplier shall commit an unfair or deceptive act or practice in connection with a consumer transaction. Such an unfair or deceptive act or practice by a supplier violates this section whether it occurs before, during, or after the transaction."

In the case at bar, the judgment was against the weight of the evidence. Absent Mrs. Morris's testimony relating to Herper's statement, there was no evidence that the time for payment on the note had been extended. Thus, there was no basis for the finding that HOC's efforts to collect on the note had been unfair, deceptive, or otherwise improper. Accordingly, we sustain the second assignment of error.

In its first assignment of error, HOC argues that the trial court erred in failing to enforce the arbitration provision of the promissory note. Our disposition of the second and third assignments of error renders this assignment moot.

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<sup>3</sup> *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578, syllabus.

We reverse the judgment of the trial court and enter final judgment in favor of HOC.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HILDEBRANDT, P.J., CUNNINGHAM and FISCHER, JJ.**

To the Clerk:

Enter upon the Journal of the Court on July 29, 2011

per order of the Court \_\_\_\_\_.  
Presiding Judge